Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal From Order No. 1202 Of 2001

(Old FAFO No. 577 of 1997)

The New India Assurance Company Ltd., Head Office 87, M.G. Marg, Mumbai, through the Senior Divisional Manager, The New India Assurance Co. Ltd., Divisional Office, 15, M.G. Marg, Civil Lines, Allahabad.

… Appellant.

Versus

1. Smt. Anita Devi W/O Late Kalam Singh, resident of village Koti, Patwari Vrat Koti, Tehsil Karan Prayag, Chamoli. (Claimant).
2. Avtar Singh son of Sri Jai Singh, C/O M/s Manoj Automobiles, T.C.P. Land, Karan Prayag.

…. Respondents.

Sri T.A. Khan, Advocate, learned counsel for the appellant.
None appeared for the respondents.

Date August 31, 2006.

PC: Hon'ble B.S. Verma, J.

This appeal under Section 30 of the Workmen's Compensation Act (***for short the Act***) is directed against the judgment and award dated 30-9-1997, passed by the Workmen Compensation Commissioner Chamoli (for short the Commissioner) in Case No. 06 of 1994-95, Smt. Anita Devi Vs. Avtar Singh and another, whereby the learned Commissioner awarded compensation of Rs. 83,192/- in favour of the claimant as mentioned in the impugned order.

Relevant facts necessary for a just decision of the appeal are that Kalam Singh Kathait, aged 30 years husband of claimant Anita Devi, lost his life due to accident on 20-12-1993 in the course of his employment. It is alleged that the deceased was employed as driver in vehicle No. UMS-837 which was owned by Avtar Singh. The deceased was getting Rs. 1500/- per month as wages in addition to Rs. 25/- as daily allowance. The claimant claimed Rs. 1,50,000/- as compensation. Notices were issued to the

opposite parties, who put in appearance and filed their separate written statements. The insurance company challenged the validity of driving licence having been possessed by kthe deceased workman/driver and age and income of the deceased were also questioned. It was stated that the driving licence was fake. On the other khand, the owner admitted that deceased was employed as driver and he used to pay Rs. 2000/- as montly wages. It was stated that the vehicle was duly insured, therefore, the liability of compensation lay upon the insurer.

The learned Commissioner framed necessary issues in the case, recorded the evidence led by the parties, heard them and after perusing the evidence, it was held that the deceased Kalam Singh died as a result of accident in the course of his employment. On the point of validity of driving licence, the Commissioner has given categorical finding that the driver (deceased) was having a valid driving licence, which was duly issued by the Licensing Authority Kathgodam. Ultimately, as per prevailing provisions of the Act, compensation was computed and a sum of Rs. 83,192/- was awarded in favour of the claimant against the insurance company vide award dated 30-9-1997.

The impugned award has been assailed mainly on the ground that the deceased workman was not having a valid driving licence and the finding of the learned Commissioner on the point is perverse.

I have heard contentions raised by the learned counsel for the appellant Sri Tanveer Alam Khan and perused the entire material on record including the lower court record.

At the outset, it may be mentioned that the appeal under Section 30 of the Act is maintainable only when the appeal involves substantial question of law for determination in appeal. In this case, it has to be examined whether the appellant has established on record

that the deceased was not having a valid driving licence by cogent evidence.

From a perusal of the record it comes out that the learned Commissioner after perusing the evidence found that the deceased was having a valid driving licence, as mentioned above. The learned counsel for the appellant has argued that as per information given in From No. 54, the licensing authority had informed that there was no driving licence issued in the name of the deceased. It is pertinent to note that the copy of the driving licence was filed by the claimant. On the point of driving licence, D.W.1 Avtar Singh had given categorical statement that the driving licence in question No. 3112/K/88 in the name of Kalam Singh was authentic and the report to the contrary obtained from the licensing authority by the insurance company is wrong. In view of this statement, it was obligatory on the part of the Insurance Company to have produced the official of the Licensing Authority, who had allegedly given information in Form No. 54. This Form No. 54 does not disclose complete particulars. The O.P.No. 1 had not admitted this document, therefore, the contents of Form No. 54 ought to have been proved by oral statement of the official concerned of the Licensing Authority. Even from the endorsement made on this Form No. 54 it has not been mentioned as to from what source it was certified that the Driving Licence in question was not issued from the R.T.O. Office concerned. For want of necessary details and strict proof of the document, no reliance can be placed on this document. It was for the appellant to have established by cogent evidence that the driving licence on record was in fact forged or fake. I am fortified in my view by the Apex Court judgment in the case of ***Punam Devi and another Vs. Divisional Manger, New India Assurance Co. Ltd. and others [(2004) 3 Supreme Court Cases, 386]*** wherein provisions of Sections 149(2) and 147 of the Motor Vehicles Act were considered. The Apex Court has observed that ***"Insurance Company neither pleading nor leading evidence that the offending driver had no licence- Claims Tribunal awarding***

compensation- Held, quantum of compensation cannot be challenged and the only ground open to the Insurance Company is under S. 149(2), to show that the insured was negligent or that he failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of the vehicle- Since the Insurance Company failed to discharge this burden, High Court erred in allowing the appeal." In the instant case also, the Insurance Company has totally failed to discharge its burden.

In view of the discussion above, the question of law is answered against the appellant and it is held that the deceased workman was having a valid driving licence, as has been held by the learned Commissioner. Accordingly, the judgment and award under appeal does not suffer from any infirmity and illegality and the same is devoid of merit and is liable to be dismissed.

The appeal is hereby dismissed. The award under appeal is upheld. No order as to costs.

The amount in deposit with the learned Workmen Compensation Commissioner, if any, be paid to the claimant.

(B.S. Verma, J.)

RCP